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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/085,886	02/27/2002	Dan Kikinis	007287.00017	7769		
22907	7590	04/30/2008	EXAMINER			
BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051			SCHNURR, JOHN R			
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/085,886	KIKINIS, DAN	
	Examiner	Art Unit	
	JOHN R. SCHNURR	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 February 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12, 18 and 19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This Office Action is in response to the Amendment After Non-Final Rejection filed 02/28/2008. Claims 1-12, 18 and 19 are pending and have been examined.

Response to Arguments

2. Applicant's arguments with respect to claims 1-12, 18 and 19 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument (Remarks pg. 5 para. 4 to pg. 6 para. 3) that Klarfeld (US PGPUB 2003/0067554) does not teach the newly added limitation of "different ones of the plurality of demographic profiles are determined by different behavior peaks indicated by the second set", the examiner respectfully disagrees. Klarfeld teaches analyzing a user history database and selecting a profile ([0230]). Different profiles are selected in response to different user behaviors. Applicant further argues that Klarfeld requires contiguous user actions in order to group the user actions into a profile. This has no bearing on the rejection as the method used by Klarfeld to collect the user history database is not relied upon. Klarfeld merely teaches analyzing a collection of user data and selecting a profile.

In response to applicant's argument (Remarks pg. 6 para. 4) that McClard (US 6,438,752) does not teach the limitations of claims 18 and 19, the examiner respectfully disagrees. McClard teaches the type/genre of a program is added to a reception history, second set of data, every time the program is selected, i.e. in response to multiple selections.

In response to applicant's argument (Remarks pg. 6 para. 4) that Schaffer (US PGPUB 2002/0104087) teaches verification for the rating of a program and not user verification for a demographic profile, including adding a category from a first set of data to a second set of data, and therefore does not render claim 6 obvious, the examiner respectfully disagrees. Figure 8 of Schaffer clearly teaches a method of updating a user profile ([0044]) by verifying changes in the profile with the user ([0048]). Applicant should note that Schaffer is merely relied upon to teach verifying profile updates with a user. Adding a category from a first set of data to a second set of data is taught by the combination of McClard, Knee and Klarfeld as discussed with respect to claim 1.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 7-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 7-19 are drawn to functional descriptive material recorded on a machine readable-medium. Normally, the claim would be statutory. However, the specification at pages 13-14 paragraph [0033] defines the claimed readable medium as encompassing non-statutory subject matter such as "electrical, optical, acoustical and other forms of propagated signals (e.g., carrier waves, infrared signals, digital signals, etc.)".

A "signal" embodying functional descriptive material is neither a process nor a product (i.e., a tangible "thing") and therefore does not fall within one of the four

statutory classes of § 101. Rather, “signal” is a form of energy, in the absence of any physical structure or tangible material.

Because the full scope of the claim as properly read in light of the disclosure encompasses non-statutory subject matter, the claim as a whole is non-statutory.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims **1, 4, 5, 7, 10, 11, 18 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over **McClard (US Patent 6,438,752)** in view of **Knee et al. (US Patent Application Publication 2002/0095676)**, herein Knee and further in view of **Klarfeld et al. (US Patent Application Publication 2003/0067554)**, herein Klarfeld.

Referring to **claim 1**, McClard teaches a method comprising:

adding a category from a first set of broadcasted programs provided by a media provider (**Head-end server 34 provides media and category information, column 4 lines 27-39.**) to a second set of categories of broadcasted programs in response to a broadcasted program viewing device being tuned, for a period of time at least equal to a first predetermined threshold, to at least one broadcasted program predetermined to be in the category from the first set (**Column 4 lines 64-67 and Figure 3 element 54 teaches storing program category information in the memory and Column 5 lines 52-67 and Column 6 lines 1-9 teaches that when a program is watched for a period of time the program is added to a frequency watch list in memory 56 of Figure 3 and along with the program name the type/genre is added to memory 56 thus the category of a program is added from a first set**

of categories in memory 54 to a second set of data that includes categories in memory 56);

McClard further teaches creating multiple profiles. (**column 5 lines 19-41**) McClard fails to teach determining a demographic profile based on the second set; and selecting a first advertisement based on the demographic profile.

In an analogous art, Knee teaches determining a demographic profile based on the second set (**Paragraphs [0029] and [0030] and Figure 2 teach determining demographic categories for a user; Paragraph [0036] teaches that a shows category is used determine a users demographic profile**); and selecting a first advertisement based on the demographic profile (**Paragraph [0050] teaches determining an advertisement from the user demographic profile**).

At the time the invention was made it would have been obvious for one skilled in the art to modify the category set moving method McClard using the demographic profiling and advertisement determination method of Knee for the purpose of categorizing user information into demographic categories that could then be used for specified purposes, such as for targeting advertisements or taking certain actions in the program guide (Paragraph [0007], Knee).

However, McClard combined with Knee does not explicitly teach the plurality of demographic profiles are determined by behavior peaks indicated by the second set.

In an analogous art, Klarfeld, which discloses a system for personalizing television, clearly teaches the different ones of the plurality of demographic profiles are determined by different behavior peaks indicated by the second set. (**Paragraph [0230] and Figure 36 teach determining user profiles based on the observed behavior of the users.**)

Therefore, at the time the invention was made, it would have been obvious to one with ordinary skill in the art to modify the system of McClard combined with Knee by determining a plurality of demographic profiles by analyzing behavior peaks indicated by the second set, as taught by Klarfeld, for the benefit of simplifying the profile system for the user ([0226] Klarfeld).

Referring to **claim 4**, depending on claim 1, Knee teaches receiving a set of advertisements including the first advertisement (**Paragraph [0023]**).

Referring to **claim 5**, depending on claim 1, Knee teaches removing a category from the second set in response to the broadcast program viewing device not being tuned for a period of time at least equal to a second predetermine

threshold, to at least one broadcasting program predetermined to be in the category from the second set (**Paragraph [0044]**).

Referring to **claim 7**, see the rejection of claim 1; (**McClard Figure 3 teaches element 50 a processor and element 52 is memory according to Column 4 lines 54-61; Knee teaches Figure 1 and elements 64 memory and 60 a microprocessor according to Paragraph [0028].**)

Referring to **claim 10**, depending on claim 7, see the rejection of claim 4.

Referring to **claim 11**, depending on claim 7, see the rejection of claim 5.

Referring to **claim 18**, depending on claim 1, McClard teaches adding a category from a first set of broadcasted programs provided by a media provider to a second set of categories of broadcasted programs in response to multiple selecting of the category from the first set. (**Column 5 lines 52-65: The viewer's reception history is updated each time a program is tuned for at least a predetermined period.**)

Referring to **claim 19**, depending on claim 7, see the rejection of claim 18.

7. Claims **2, 3, 8 and 9** are rejected under 35 U.S.C. 103(a) as being unpatentable over **McClard (US Patent 6,438,752 B1)** in view of **Knee et al. (US Patent Application Publication 2002/0095676)** further in view of **Klarfeld et al. (US Patent Application Publication 2003/0067554)**, as applied to claims 1 and 7 above, and further in view of **Ellis et al. (US Patent Application Publication 2003/0020744)**, herein Ellis.

Referring to **claim 2**, depending on claim 1, McClard, Knee and Klarfeld fail to teach displaying the first advertisement with an interactive programming guide.

In an analogous art Ellis teaches displaying the first advertisement with an interactive programming guide (**Paragraphs [0125] and [0126] teach selecting an advertisement and Paragraph [0110] teaches using viewer history to determine which advertisements to use in the program guide, Figure 5 elements 108.**)

At the time the invention was made it would have been obvious for one skilled in the art to modify the combined methods of McClard, Knee and Klarfeld using the

targeted advertisement display method of Ellis for the purpose of providing users a user customized program guide experience (Paragraph [0010], Ellis).

Referring to **claim 3**, depending on claim 1, McClard, Knee and Klarfeld fail to teach transmitting the second set to a unit at a head end of a broadcasting system.

In an analogous art Ellis teaches transmitting the second set to a unit at a head end of a broadcasting system (**Paragraphs [0125] and [0126] and Figure 2b teach transmitting the user history to the program guide server element 25**).

At the time the invention was made it would have been obvious for one skilled in the art to modify the combined methods of McClard, Knee and Klarfeld using the transmission of recorded user history data to the head end of Ellis for the purpose of providing users' a user customized program guide experience (Paragraph [0010], Ellis).

Referring to **claim 8**, depending on claim 7, see rejection of claim 2.

Referring to **claim 9**, depending on claim 7, see rejection of claim 3.

8. Claims **6 and 12** are rejected under 35 U.S.C. 103(a) as being unpatentable over **McClard (US Patent 6,438,752 B1)** in view of **Knee et al. (US Patent Application Publication 2002/0095676)** further in view of **Klarfeld et al. (US Patent Application Publication 2003/0067554)**, as applied to claims 1 and 7 above, and further in view of **Schaffer et al. (US Patent Application Publication 2002/0104087)**, herein Schaffer.

Consider **claim 6**, McClard, Knee and Klarfeld, combined as in claim1, clearly teach adding a category from a first set to a second set.

However, McClard, Knee and Klarfeld do not explicitly teach verifying profile updates with a viewer.

In an analogous art, Schaffer, which discloses a system for maintaining a user profile, clearly teaches verifying profile updates with a viewer. (**The feedback request command queries the user about a program being watched, [0048].**)

Therefore, at the time the invention was made, it would have been obvious to one with ordinary skill in the art to modify the system of McClard, Knee and Klarfeld by verifying profile updates with a viewer, as taught by Schaffer, for the benefit of maximizing the performance of a television recommender ([0010] Schaffer).

Referring to **claim 12**, depending on claim 7, see rejection of claim 6.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN R. SCHNURR whose telephone number is (571)270-1458. The examiner can normally be reached on Monday - Friday, 8:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JRS

/Christopher Grant/
Supervisory Patent Examiner, Art Unit 2623